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Supreme Court, U.S.
FILED
09-478 AUG 6 - 2009
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No. _____

IN THE
THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2009

FROM
THE NINTH CIRCUIT COURT OF APPEALS
CASE NO. 07-55122

Ramnik Trivedi,
Petitioner,

v.

United States of America; et al.,
Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Counsel of Record:
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September 2009

QUESTION PRESENTED

1. Does the Ninth Circuit Court conduct independent review of plaintiff's appeal based on constitutional statutory construction of Federal Tort Claim Act (FTCA) 28 U.S.C. §§ 1346(b), 2671-2680, while District Court dismissed the complaint under Revenue and Taxation Code Title 26 of income tax, which was irrelevant law to apply for dismissal of plaintiff's complaint?

2. Does the Ninth Circuit Court conduct independent review properly on plaintiff's appeal for two years without any proceeding in the appeal court and finally entered Memorandum (unpublished) affirmation of instant dismissal of complaint by the District Court and discard all injuries and damages claims, was it independent review?

3. Does this Petition raises an important national issue that should be decided by the Supreme Court because District court decision involves a deprivation of protected class an elder plaintiff 69 years old and disabled person's surviving right under Federal 42U.S.C.§ 3058i Elder Abuse Protection Act?

4. Whether the U.S. District Court failed to provide adequate due process for justice of the case and likewise the Ninth Circuit Court of Appeals erred in reviewing this case independently in dismissing Plaintiff's complaint by the U.S. District Court.

LIST OF PARTIES

Petitioner: Ramnik Trivedi, pro se, is married with family, age 69 years old, disabled U.S. Citizen and resident of the State of California. Plaintiff is the victim of defendant to abuse, torture and sustain harms, injuries and damages to elder U.S. citizen and his life has been devastated. Petitioner is Plaintiff-Appellant.

Defendant: United States of America, et al;

RULE 14.1 STATEMENT

Pursuant to Rule 14.1(b) of the Rules of this Court, petitioner hereby provides the following names of parties to this proceeding whose names do not appear in the caption:
Medeline Ahmadidarani, Official of U.S. Agency IRS, Los Angeles, California; Laurie Kelman, Official of U.S. Agency IRS, Los Angeles, California; R.M. Owens, Official of U.S. Agency IRS, Cincinnati, OH 45250-5566; G. Acklin, Official of U.S. Agency IRS, Memphis, TN 38130-0834.

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PETITION FOR A WRIT OF CERTIORARI

Ramnik Trivedi ("Plaintiff") *pro se*, age 69 years old, U.S. Citizen and resident of the State of California respectfully prays for a writ of certiorari to review Memorandum of Unpublished Affirmed Lower Court's decision on March 26, 2009 and denial of appellant's Petition for Rehearing entered on June 24, 2009 by the Ninth Circuit Court of Appeals and dismissal order of plaintiff's complaint by the U.S. District Court on November 28, 2006.

OPINIONS BELOW

1. A timely petition for rehearing was denied on June 24, 2009 by the Ninth Circuit Court of Appeals and appears at Appendix A and is Case No. 07-55122.

2. Memorandum of Unpublished Affirmed Lower Court's decision to Dismiss the Complaint that was entered on March 26, 2009 by the Ninth Circuit Court of Appeals and appears at Appendix B and is Case No. 07-55122.

3. The complaint dismissal order entered on November 28, 2006 by the United States District Court for the Central District of California and appears at Appendix C and is Case No. CV 06-3468 DDP (FFMx).

JURISDICTION

This Petition for Writ of Certiorari is filed within 90 days of the denial of Petition for Panel Rehearing on June 24, 2009 by the Ninth Circuit Court of Appeals and is timely. Under 28 U. S. C. § 1254(1) jurisdiction of the U.S. Supreme Court, the Petitioner respectfully prays that a writ of certiorari issue to review and the opinions attached in Appendix A, B and C. The jurisdiction of this Court is

invoked under 28 U.S.C. 1254(1); i.e.., that the Supreme Court may review cases in the federal courts of appeal by writ of certiorari granted upon petition.

STATUTES INVOLVED

The statutory construction and application of the following titles are the bases for the complaint in this petition for writ of certiorari to the United States Supreme Court:

1. 28 U.S.C. §1346(b), 2671 et seq.
2. 28 U.S.C. §§1346(b), 2671-2680
3. 28 U.S.C. §2401(b)
4. 42 U.S.C. § 3001, Title VI, Older Americans Act
5. 42 U.S.C. § 3058i, Elder Abuse Protection Act, elder abuse prevention, protection act.

STATEMENT OF THE CASE

I. Nature of the Case: The Underlying Tort Action

On June 7, 2006, petitioner-plaintiff Ramnik Trivedi as a pro se, (hereinafter "Plaintiff") filed his complaint pursuant to 28 U.S.C. §§ 1346(b), 2671-2680, Federal Torts Claim Act ("FTCA") in the United States District Court, Central District of California, Los Angeles, against the United States of America, et al; (hereinafter "Defendant") alleging tortuous conduct arising from events that occurred during the defendant enforced illegitimate actions against Plaintiff. The Plaintiff was the victimized by the Defendant. Defendant had intentionally and affirmatively abused, tortured, financially exploited elder plaintiff and sustained harms, injuries and damages to elder U.S. citizen and his life has been devastated. In this action, Plaintiff seeks Injuries and damages compensation and relief

and equitable relief from the Defendant and reasonable suit cost pursuant to Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b).

Before filing complaint in the U.S. District Court, plaintiff had exhausted an administrative remedy pursuant to administrative proceeding under 28 U.S.C. § 2401(b), by filing an administrative claim with the U.S. Department of Justice, Attorney General's office, Washington, DC and that more than six (6) months passed without final action on administrative claim and this was treated as a denial or rejection of the claim, 28 U.S.C. § 2401(b), and that permitting plaintiff to institute suit in the Federal District Court of U.S and this suit had invoked jurisdiction of the U.S. District Court. The defendant had waived its sovereign immunity by denying plaintiff's claim and consented suit under the FTCA. The FTCA includes an important waiver of sovereign immunity in 28 U.S.C. § 1346(b) for private litigant.

Plaintiff had also brought an action against Defendant under protected class plaintiff 69 years old, U.S. citizen and disabled person, under 42 U.S.C. § 3001; Title VI, Older Americans Act; 42U.S.C. § 3058i, Elder Abuse Protection Act, elder abuse prevention, protection and Rehabilitation acts and plaintiff had prayed relief to the U.S. District Court for he suffered injuries and damages compensation and equitable relief; and permanent injunction against defendants actions to prevent defendants for sustaining further injuries and damages to elder plaintiff. The legislative congress purpose of this law is to provide extra protection to a vulnerable portion of elder population of our country from

mistreatment by abuse or neglect. To do so, the Elder Abuse Protection Act provides special remedies for relief.

II. Factual Background

The Defendant had enforced actions against plaintiff and it had created abusive and torturing circumstances up to the extreme point that Plaintiff was stopped and prevented to purchase medications and food for him and his wife from his bank accounts, at that time, the Plaintiff's wife was in dangerous illness and she was not able to survive without four different kinds of medications. In that situation, the Plaintiff had submitted emergency situation 911 Form to the Officials of Federal Government/IRS requesting to allow Plaintiff to write a check from his bank accounts for purchasing medications and food. But the Defendants had intentionally and abusively rejected, neglected and denied Plaintiff's request. Defendants had directly consumed thousands of dollars from the plaintiff's bank accounts money. Plaintiff is a senior citizen more vulnerable to Defendants' conduct because of his age, impaired health and suffered physical injuries and economic damages resulting from Defendants' conduct. This case was against Defendant for injuries, damages and harms compensation and relief. The plaintiff had prayed to the U.S. District Court for granting relief under FTCA 28 U.S.C. §§ 1346(b), 2671-2680 and under protected class plaintiff 69 years old, U.S. citizen and disabled person, under 42 U.S.C. § 3001; Title VI, Older Americans Act; 42U.S.C. § 3058i, Elder Abuse Protection Act, elder abuse prevention, protection and Rehabilitation acts.

III. **Decisions Below**

On October 17, 2006, The Defendant had filed a motion to dismiss the complaint. On October 24, 2006, plaintiff had filed an opposition to defendant's motion. But, The District Court had instantly dismissed the Plaintiff's complaint on failure to state a claim under which relief can be granted and that without trial and without finding what information was necessary in this case to a determination of whether income tax was owed by the plaintiff or not owed by the plaintiff for the old tax years of 1992 and 1993. The Defendant's motion to dismiss the complaint that was entirely relied on the grounds of title 26 of Income Tax, Revenue and Taxation Code which was irrelevant law to apply for dismissal of plaintiff's complaint that was ground based on FTCA 28 U.S.C. §§ 1346(b), 2671. The U.S. District Court left the case without justice. On Jan 16, 2007, plaintiff subsequently filed his Notice of Appeal timely of the original order granting defendant's motion to dismiss the complaint. After about two years, on March 26, 2009, the Ninth Circuit Court of Appeals entered its unpublished affirmation of the district court's dismissal of the complaint. The denial of appellant's Petition for Rehearing entered on June 24, 2009. The Ninth Circuit Court of Appeals erred in reviewing plaintiff's Petition for Rehearing because it is a legal review standard of the court that on a motion to dismiss under Fed. R. Civ.P. 12(b)(6) for failure to state a claim, the court looks to the four corners of the complaint and is required to accept the plaintiff's allegations as true and to construe those allegations in light most favorable to the plaintiff. *Scheuer v.*

Rhodes, 416 U.S. 232, 236, 40L. Ed. 2d 90, 94 S. Ct. 1683, *1974.* The dismissal of this case was reversible.

REASONS FOR GRANTING THE WRIT

The District Court was wrong to dismiss the Plaintiff's Complaint on failure to state a claim under which relief can be granted. The District Court was mistaken when it interpreted review standard of the court that in deciding the 12(b)(6) motion, The allegations of the complaint must be construed as true and in light most favorable to the plaintiff and the decision of district court is contrary to failure to state a claim under which relief can be granted and thus it conflicts with the independent review of the Ninth Circuit Court of Appeals.

The Ninth Circuit Court of Appeals entered its unpublished affirmation of the district court's dismissal of the complaint that raises an important national issue and that should be decided by the Supreme Court for the vulnerable portion of elder population of the United States from mistreatment by abuse or neglect or financial exploitation where their constitutional rights are safeguarded.

This Court should grant Certiorari to address now the conflicting decision of Ninth Circuit in affirming of instant dismissal of plaintiff's complaint by the District Court on failure to state a claim under which relief can be granted and that is conflicting with the Ninth circuit decision.

1. THIS PETITION PRESENTS A CONFLICT ON AN IMPORTANT QUESTION OF FEDERAL LAW IN THE NINTH CIRCUIT DECISION AFFIRMING THE DISTRICT COURT DECISION IN DISMISSING COMPLAINT FOR

FAILURE TO STATE A CLAIM UNDER WHICH RELIEF CAN BE GRANTED.

The Ninth Circuit Court of Appeals entered Memorandum (unpublished) affirmation of instant dismissal of plaintiff's complaint by the District Court and discard all injuries and damages claims and that is not an independent review of this appeal because the U.S. District Court was mistaken when it interpreted Plaintiff's complaint on failure to state a claim under which relief can be granted and that resulted in a conflict of statutory construction and application of Federal Tort Claims Act (FTCA) 28 U.S.C. §§ 1346(b), 2671-2680 with the Federal revenue and taxation code Title 26. The District Court had instantly dismissed the Plaintiff's complaint and that without trial and without finding of facts of the complaint of this case. The U.S. District Court failed to provide adequate due process for justice of this case and likewise the Ninth Circuit Court of Appeals erred in reviewing independently the decision of U.S. District Court in dismissal of Plaintiff's complaint. The review standard of Court indicates that in reviewing the complaint, the court must accept as true all factual allegations in the complaint and construe them in light most favorable to the plaintiff. *Windsor v. The Tennessean*, 719 F.2d 155, 158 (6th Cir. 1983). In deciding the 12(b)(6) motion, The allegations of the complaint must be construed as true and in light most favorable to the plaintiff. *Gregory v. Shelby County, Tenn.*, 220 F.3d 433, 446 (6th Cir. 2000) (citations omitted). The rules generally require only a "short and plain statement of the claim" and not detailed allegations. *Leatherman v. Tarrant County Narcotics Intelligence &*

Coordination Unit, 507 U.S. 163, 168 (1993). The Supreme Court recently reaffirmed that Rule 8(a) requires only "simplified notice pleading." *Swierkiewicz v. Sorema*, N.A., 534 U.S. 506, 512-13 (2002). Where there are conflicting interpretations of the facts, they must be construed in the plaintiff's favor. *Sinay v. Lamson & Sessions Co.*, 948 F.2d 1037, 1039-40 (6th Cir. 1991). This petition presents vitally important questions on which this Court should grant a writ of *certiorari*. For these reasons, the writ of certiorari must be granted.

2. THIS CASE REPRESENTS AN IMPORTANT NATIONAL ISSUE THAT SHOULD BE DECIDED BY THE SUPREME COURT FOR THE VULNERABLE PORTION OF ELDER POPULATION OF THE UNITED STATES FROM MISTREATMENT BY ABUSE OR NEGLECT OR FINANCIAL EXPLOITATION WHETHER THEIR CONSTITUTIONAL RIGHTS ARE SAFEGUARDED.

The Ninth Circuit Court of Appeals entered its unpublished affirmation of the district court's dismissal of the complaint that raises an important national issue and that should be decided by the Supreme Court because this case also involves a deprivation of protected class an elder plaintiff, 69 years old U.S. citizen and disabled person's surviving right. The Ninth Circuit Court of appeals has refused to recognize elder/disabled protected status of elder plaintiff. 42 U.S.C. § 3001; Title VI, Older Americans Act; 42U.S.C. § 3058i Elder Abuse Protection Act, and left this case without any proceeding of this case in the Ninth Circuit Court. The legislative congress purpose of this law is to provide extra protection to a vulnerable portion of elder population from mistreatment by abuse or neglect. To do so, the Elder Abuse Protection Act provides special

remedies for relief. But, the Ninth Circuit Court entered Memorandum (unpublished) affirmation of dismissal of plaintiff's complaint and left this case without justice and deprived due process right of 69 years old, U.S. Citizen, elder plaintiff and therefore this case issue requires resolution at national level by the Supreme Court.

The elder plaintiff is protected under elder citizen's surviving right under 42 U.S.C. § 3001; Title VI and II, Older Americans Act; 42 U.S.C.§ 3058i Prevention of Elder Abuse, neglect, and Protection Act with remedy of 28 U.S.C. §2671 et seq.; §§ 2671-2680. Under like this case circumstances, the Ninth Circuit, in a brief per opinion had reversed the District Court's dismissal of the tort claim cases. It reasoned that where " 'unique governmental functions' " are at issue, the Act waives sovereign immunity if " 'a state or municipal entity would be [subject to liability] under the law [. . .] where the activity occurred " 362 F. 3d 1236, 1240 (2004) (citing Hines, supra, at 1448, and quoting Doggett, supra, at 689, and *Concrete Tie of San Diego, Inc. v. Liberty Constr., Inc.,* 107 F. 3d 1368, 1371 (CA9 1997). In this petition, plaintiff presents that Defendant's actions involved a deprivation of protected class an elder, 69 years old plaintiff. The Plaintiff is vulnerable portion of elder population of the United States and he was abused, neglected and financially exploited and sustained injuries and damages and his elder life has been devastated by the Defendant. This petition represents an important national issue that should be decided by the Supreme Court for the vulnerable portion of elder population of the United States from mistreatment by abuse or neglect or financial exploitation where their

constitutional rights are safeguarded and for these reasons, the writ of *certiorari* must be granted.

3. WRIT OF CERTIORARI SHOULD BE ISSUED FOR RESOLUTION OF A CONFLICT ABOUT AN IMPORTAN QUESTION OF FEDERAL LAWS

Writ of Certiorari should be granted because the Ninth Circuit Court of Appeals entered Memorandum (Unpublished) Affirmation of dismissal of plaintiff's complaint with the U.S. District Court, have created an intolerable conflict in administration of plaintiff's claim for injuries, damages and harms compensation and relief and that the claims covered under Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680 against Defendant United States of America, et al. ("Defendant") because The tort liability of the United States is defined by the Federal Tort Claims Act (FTCA), which provides in part that "[t]he United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances" 28 U.S.C. 2674 (first sentence). The FTCA also provides that "[s]ubject to the provisions of chapter 171 of this title," i.e., 28 U.S.C. 2671-2680, the district courts "shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, * * * for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. 1346(b)(1). The FTCA further provides that the

remedies provided by the Act are "exclusive of any other civil action or proceeding." 28 U.S.C. 2679(b)(1); *United States v. Smith,* 499 U.S. 160, 161-162 (1991).

Plaintiff had filed a proof of claim with the complaint and is deemed to have waived sovereign immunity with respect to a claim against the United States and its agency because Plaintiff had presented his claim in writing with the U.S. Department of Justice, Attorney General's office, Washington, DC; more than six months time passed without any action of the claim and this will be treated as a denial or rejection of plaintiff's claim under 28 U.S.C. § 2401(b) and that government waived its sovereign immunity and congress has consented and authorized plaintiff's suit under the FTCA. *Dalehite v. United States,* 346 U.S. 15, 30-31 (1953). The FTCA includes an important waiver of sovereign immunity in 28 U.S.C. § 1346(b) for private litigant. Also closer to plaintiff's case is *Larson v. Domestic and Foreign Commerce Corp.* 337 U.S. 682, 689-91, 69 S.Ct. 1457, 1461-1462, 93 L.Ed 2d 1628 (1949). The citation reads, "(In) actions claiming that a government official acted in violation of the Constitution or of statutory authority . . . Congress has either waived sovereign immunity or the doctrine does not apply." A closer case is *Tax Analysts & Advocates v. Shultz (1974, DC Dist Col)* 376 F Supp 889, 74-2 USTC P 13006, 34 AFTR 2d 74-5289. The Plaintiff has natural Right to pursue judicial remedies for unconstitutional government conduct. That is, specifically within the context of constitutional torts, the Petition Clause's affirmation of government suability operates as a constitutional antidote to the doctrine of sovereign immunity. In addition, 28 U.S.C. Section 1331

is an adequate statutory basis to confer subject matter jurisdiction over federal questions involving the constitutionality of federal acts, as is 28 U.S.C. 1346 and 42 U.S.C. 1983.

Plaintiff's complaint was based on Federal Tort Claim Act (FTCA) under 28 U.S.C. §§ 1346(b), 2671 et seq. As a matter of law, the FTCA 28 U.S.C. §§ 1346(b), 2671-2680 and FTCA is not under Revenue and Taxation Code, Title 26. The district court had made instant decision and dismissed the complaint without finding what factual information was necessary in this case to a determination of whether income tax was owed by the plaintiff or not owed by the plaintiff for the old tax years 1992 and 1993. It shows that there is no relative concept of law for dismissal of plaintiff's complaint without full Trial of this case in the court. The dismissal of this case was reversible for further judicial proceedings in the court. The U.S. District Court granted Defendant's motion under F.R.C.P. 12(b)(6) and dismissed petitioner's complaint but it is well settled in review standard of the court that when defendant presented with a motion to dismiss, a court must construe the complaint in the light most favorable to the plaintiff and its allegations must be taken as true. Moreover, any ambiguities or uncertainties concerning the sufficiency of the claims must be resolved in favor of the plaintiff. See *Hughes v. Rowe*, 449 U.S. 5, 10 (1980); *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1979); see also 5 Wright C Miller, Federal Practice and Procedure 6 1357 (1969). A complaint should not be dismissed unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of the claim that would entitle the Plaintiff to relief. See *Van Buskirk v. Cable News*

Network, Inc. 284 F. 3d 977, 980 (9th Circuit 2002). Plaintiff's complaint should not be dismissed because plaintiff presented record with the complaint as a evidence in this case is extensive and clearly shows adequate evidence to support plaintiff's claims for relief and Complaint dismissal conflicts with Failure to State a Claim upon which relief can be granted such that said district court's case dismissal order conflicts with the U.S. Supreme Court decisions regarding the dismissal of plaintiff's injuries and damages complaint and case including, *Caidin v. United States,* 564 F.2d 284, 286 (9th Cir. 1977), *School Dist. v. United States,* 433 U.S. 299 (1977). It also conflicts with this Court's decision in *Gomez v. Toledo*, 446 US 635 (1980), which holds that when a statute allocates the burden of proof on a fact-laden issue to the defendant, making the point an affirmative defense, a complaint may not be dismissed under Federal Rules of Civil Procedure 12(b)(6) on the basis of that defense. Therefore, Writ of Certiorari should be granted.

4. WRIT OF CERTIORARI SHOULD BE ISSUED FOR RESOLUTION OF AN IMPORTANT NATIONAL ISSUE OF PROTECTED CLASS ELDER AND DISABLE U.S. CITIZENS SURVING RIGHT

This Petition raises an important national issue that should be decided by the Supreme Court because this case also involved in a deprivation of protected class an elder plaintiff 69 years old, disabled person's surviving right and the Ninth circuit court has refused to recognize elder/disabled protected status of elder plaintiff. 42 U.S.C. § 3001; Title VI, Older Americans Act; 42U.S.C. § 3058i Elder Abuse Protection Act. The District Courts have original jurisdiction over civil actions, or those based on deprivation of rights. Actions

involving deprivation of rights under color of authority are within the jurisdiction of the Federal Courts and is given under 28 U.S.C. section 1343(a)(3). The dismissal of complaint resulted in a conflict of statutory construction and application of protected class status of elder plaintiff. The dismissal of plaintiff's complaint was without full Trial of this case in the court. Thus, the dismissal of this case was reversible for full Trial. The Ninth Circuit made an error by affirming the district court decision of dismissal of plaintiff's complaint without justice. Thus this case is especially important because it is the result of affirmative wrongful by the Ninth Circuit Court of Appeals and left this case without justice, citing *Forrester v. White*, 484 U.S. 219, 227 (1988). *See also Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (per curiam) ("Government official is not immune from liability for non-judicial acts"). A complaint should not be dismissed unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of the claim that would entitle the Plaintiff to relief. See *Van Buskirk v. Cable News Network, Inc.* 284 F. 3d 977, 980 (9th Circuit 2002). The record in this case is extensive and clearly shows adequate evidence to support Petitioners' claims for relief and Complaint dismissal conflicts with Failure to State a Claim upon which relief can be granted and that said district court's case dismissal order conflicts with the U.S. Supreme Court decisions regarding the dismissal of plaintiff's injuries and damages complaint and cases including, *Caidin v. United States,* 564 F.2d 284, 286 (9th Cir. 1977), *School Dist. v. United States,* 433 U.S. 299 (1977). It also conflicts with this Court's decision in *Gomez v. Toledo*, 446 US 635 (1980), which holds that when a statute allocates the burden of proof

on a fact-laden issue to the defendant, making the point an affirmative defense, a complaint may not be dismissed under Federal Rules of Civil Procedure 12(b)(6) on the basis of that defense. The complaint dismissal was in error. It shows that there is no relative concept of law for dismissal of plaintiff's complaint without full Trial of this case in the court. Therefore, Writ of Certiorari should be granted

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Petitioner: Ramnik Trivedi
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DATED: September 18, 2009

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAMNIK M. TRIVEDI, Plaintiff-Appellant, vs. UNITED STATES OF AMERICA; et al., Defendant-Appellees.	No. 07-55122 D.C. NO. CV-06-03468-DDP Central District of California, Los Angeles Date of Entry: June 24, 2009 ORDER

Before: HAWKINNS and TASHIMA, Circuit Judges

Trivedi's petition for panel rehearing is denied.

No further filings shall be accepted in this closed case.

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAMNIK M. TRIVEDI, Plaintiff-Appellant, vs. UNITED STATES OF AMERICA; et al., Defendant-Appellees.	No. 07-55122 D.C. NO. CV-06-03468-DDP Central District of California, Los Angeles Date of Entry: March 26, 2009 MEMORANDUM*

Appeal from the United States District Court
For the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted March 18, 2009**

Before: LEVY, HAWKINS and TASHIMA, Circuit Judges.

Ramnik M. Trivedi appeals pro se from the district court's order dismissing his action against the United States and employees of the Internal Revenue Service ("IRS") regarding garnishment for collection of his unpaid federal income taxes for 1992 and 1993. We have jurisdiction under 28 U.S.C § 1291. We review de novo the

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

district court's grant of a motion to dismiss, *Hicks v. Small, 69 F.3d967, 969 (9th Cir. 1995),* and affirm.

The district court properly dismissed Trivedi's claims against the four individual IRS employees named in his complaint for actions taken to collect taxes from Trivedi. Congress has established a comprehensive statutory scheme for seeking redress in federal tax matters, which Trivedi has not followed. See 26 U.S.C§ 7433; *Adams v. Johnson,* 355 F 3d 1179, 1186 (9th Cir. 2004) (because the Internal revenue Code gives taxpayers meaningful protections against government transgressions in tax assessment and collection, taxpayers can not bring actions against IRS employees for damages under *Bivens v. six unknown named Agents of the federal Bureau of Narcotics, 403 U.S. 388 (1971.)).*

While the Federal Tort Claim Act (FTCA) provides a limited waiver of sovereign immunity for certain tort claims against the United States, the FTCA expressly provides that no waiver exists for a claim, such as here, "arising in respect of the assessment or collection of any tax " 28 U.S.C. §2660(c).

We also agree with the district court that Trivedi cannot sue the United States or its employees under 42 U.S.C. § 3001's provisions for protections against elder abuse, because the act does not create a cause of action against united states. *See, e.g, Northwest Airlines, INC. v. Transp. Workers Union,* 451 U.S. 77, 94 (1981) (unless congressional intent can be inferred from the language of the statute,

the statutory structure, or some other source, the essential predicate for implication of a private remedy does not exist).

Trivedi also contends that the district court erred by denying his motion for a default judgment against the United states because defendant did not answer or respond within 60 days of receiving his complaint. The record reflects that the United States was not properly served with the summons and complaint, and therefore, could not be held in default. *See Direct Mail Specialists Inc. v. Eclat Computerized Tech.*, 840 F.2d 685, 688 (9th Cir. 1988)("A federal court does not have jurisdiction over defendant unless the defendant has been properly served under Fed. R. Civ. P. 4.").

Accordingly, the district court is

AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 06-03468 DDP(FFMx)

RAMNIK M. TRIVEDI,
Plaintiff,

vs.

UNITED STATES OF AMERICA; et al.,
Defendants.

[Motion filed on October 17, 2006]

Date of Entry: Nov 28, 2006

ORDER GRANTING MOTION TO DISMISS

This matter comes before the court on the defendants' motion to dismiss the plaintiff's complaint. After reviewing the papers submitted by the parties, the court grants the motion and adopts the following order.

I. BACKGROUND

Ramnik Trivedi (the plaintiff), who is pro se, is a 67 year old U.S. Citizen and resident of California. The IRS has assessed tax due against the plaintiff for the year of 1992 and 1992. (comp. ¶ 5.) The amount of tax due as of August 9, 2004, according to the Notice of federal tax lien attached to the complaint, was approximately $ 47,114. (Id., Encl..D.) The plaintiff alleges that the IRS and State of California taxing othorities attempted to collect the plaintiff's past due liabilities by garnishing his wages and levying on his bank

accounts. (d. ¶ 21.) These tax collection actions by the IRS and the State of California allegedly caused the plaintiff physical and emotional damage. (ID. ¶ 25.)

On June 7, 2006, the plaintiff filed his complaint in federal district court. The complaint names the United States of America and four employees of the IRS as defendants. The complaint alleges that the United States and its employees caused him physical and emotional injury when they attempted to collect his past due taxes. The complaint further alleges that the plaintiff is entitled to relief under the "older American Act," the elder abuse protection act, " the federal Tort claims Act, the Bivens theory, and 42 U.S.C. §1983. The complaint seeks money damages and an injunction against further tax collection action against the plaintiff.

On October 17, 2006, the defendants filed the present motion to dismiss.

II. Discussion

A. IRS Employees

As an initial matter, the defendants contend that this court has no jurisdiction over the four individual IRS employees named as defendants. Although not expressly alleged in the complaint, it appears that plaintiff named four individual IRS employees defendants in their official capacities. Actions against IRS employees in their official capacities are essentially suits against the United States. See Basler v. DOJ, 327 F.3d 903, 907 (9th Cir. 2003); Gilbert v. DaGrossa, 756 F.2d 1455, 1458-59 (9th Cir 1985).

Accordingly, the court must determine whether the doctrine of sovereign immunity would require dismissal of the plaintiff's complaint. [1]

B. Sovereign Immunity and Statutory Authority for Private cause of Action

No suit or request for relief may be brought against the United States in any court unless there has been an express waiver of sovereign immunity. As a sovereign the United States and its agencies may not be sued without its consent, and the terms of its consent define the court's jurisdiction. United States v. Dalm, 494 U.S. 596, 608 (1990); Gilbert, 756 f.2d at 1458. Only Congress can waive the sovereign immunity of the United States by enacting statutes consenting to suit. See United States v. Sherwood, 312 U.S. 584, 587 (1941); Midwest Growers co-op Corp. v. Kirkemo, 533 F2d 455, 465 (9th Cir. 1976). In determining whether Congress has waived the immunity of the United States, courts must construe statutory waivers strictly in favor of the sovereign and must not

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[1] Moreover, none of the IRS employees was served with a copy of the summons and complaint. Thus, the Court also lacks personal jurisdiction over these defendants pursuant to Federal Rules of Civil procedure 4(e) and 12 (b) (5).

enlarge the waiver beyond what the statutory language requires. See Library of Congress v. Shaw, 478 U.S. 310 (1986).

The plaintiff alleges that the court has jurisdiction over this matter because it is a civil action arising under the "Older American Act," the "Elder Abuse Protection Act," the federal Tort Claims Act, The Bivens theory, and 42 U.S.C. § 1983. The court now examines each of these statutes to determine whether they provide for a waiver of sovereign immunity and give rise to a private right of action against the United States.

1. Older American Act and Elder Abuse Protection Act

The plaintiff alleges that the defendants acted without probable cause on repeated occasions to suppress the exercise of his constitutionally protected elder citizen's rights" under the Older American Act ("OAA") and the Elder Abuse Protection Act ("EPA"). Title 42, Chapter 35 of the United States code, entitled programs for Older Americans, establishes a set of national objectives for older Americans in the areas of employment, retirement and community services. See 42 U.S.C §3001 et seq. Specifically, the EPA, 42 U.S.C § 3958i, provides that state agencies shall use allotments granted under subsection (a) to engage in activities to develop, strengthen, and carry out programs for the prevention and treatment of elder abuse, neglect, and exploitation, including financial exploitation. Neither the OAA nor the EAPA, however, provides that private individuals may sue the United States for damages. Person subject to tax collection efforts by the IRS may not look to the OAA or the

EAPA for relief. Moreover, there is not a waiver of sovereign immunity within the OAA or EAPA. Therefore, neither the OAA nor the EAPA may be used as a basis for the plaintiff's suit against the United States or its employees.

2. Federal Tort Claims Act

The plaintiff alleges that this case also arises under the Federal Tort Claims Act ("FTCA), 28 U.S.C §§ 1346(b) and 2671 et seq. The FTCA provides a private right and remedy against the United States for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment.

The Federal Employees Liability reform and Tort compensation Act ("FELRTCA") immunizes United States employees from liability for their ""negligent or wrongful acts or omission ... while acting within the scope of [their] office or employment . " Green v. Hall, 8 F.3d 695, 698 (9th Cir. 1993), see 28 U.S.C § 2679 (b) (1).

As the Court in Green explained:

> The Attorney General certifies whether a United States employee was acting within the scope of his or her employment at the time of an event giving rise to a civil claim. 28 U.S.C § 2679 (d) (1), (2). Once certification is given in a civil action, FELRTCA requires the substitution of the United States as the defendant, and, if the action was originally filed in state court, the removal of the action to federal court. Id. Under the terms of FELRTCA,

the substitution of the United States leaves the plaintiff with a single avenue of recovery, the Federal Tort Claims Act ("FTCA"), 28 U.S.C §§ 1346, 2671 et seq. 28 U.S.C § 2679 (d) (4). Green, 8F3d at 698. Therefore, the plaintiff may not bring an action against the named IRS employees under the FTCA.

Moreover, the FTCA specifically bars suits relating to the assessment and collection of taxes. See 28 U.S.C §2680 © (" The provisions of this chapter [28 USCS §§ 2671 et seq.] and section 1346 (b) of this title [28 USCS § 1346(b)] shall not apply to . . . . (c) any claim arising in respect of the assessment or collection of any tax or customs duty . . . ."); Smith v. Brady. 972 F2d1095, 1099-1100 (9th cir 1992) (" The Federal Tort Claims Act . . . has foreclosed suits for allegedly tortuous acts related to the collection of taxes."). A broad range of activity by the IRS arises in connection with the determination of tax liability. See Morris v. United States, 521 F.2d 872, 874 (9th Cir. 1975) (in the course of collection activities IRS told taxpayer's creditors of tax liability and potential insolvency); Interfirst Bank Dallas. N.A. v. United States, 769 F.2d 299, 306-07 (5th Cir. 1985), cert. denied, 475 U.S. 1081 (1986) (wrongful levy of property); Capozzoli v. Tracey, 663 F.2d 654, 657 (5th Cir. 1981) (alleged invasion of privacy and trespass in photographing property during an investigation of casualty loss).

The plaintiff alleges that the IRS attempted to collect his past due tax liabilities by garnishing his wages and levying on his bank accounts. The plaintiff also alleges that the defendants harassed,

oppressed and abused him by removing a large sum of money from his account and not allowing him to purchase necessary medication for his despite an emergency situation 9-1-1 form, which was presented to the IRS officials. However, these actions arose in connection with the assessment and collection of the plaintiff's taxes, and thus the plaintiff can not pursue his claim under FTCA.

3. Bivens Action

The plaintiff alleges that his claim qualifies as Bivens action. In Bivens v. Six Unknown Named Agents of fed. Bureau of Narcotics, 40 U.S. 388, 396-97 (1971), the United States Supreme Court held that, in appropriate cases, government officials may be held personally liable for violations, committed under the color of government authority, of citizens' constitutional rights, Adams v. Johnson, 355 F.3d 1179, 1183 (9th Cir. 2004). Bevens gives an individual a federal common law basis to sue federal government actors if they violate the individual's constitutional rights. Id. However, the right to sue as established by Bivens is qualified and is not absolute. Id.

Relying on the comprehensiveness of the Internal revenue Code, and the many explicit remedial provisions that the Code contains, the First, Third, Fifth, Six, seventh, Eighth, and tenth circuits have all held Bivens actions inapplicable for claims arising from federal tax assessment or collection. Id.; See Shreiber v. Mastrogiovanni, 214 F.3d 148, 152 (3d Cir. 2000); Dahn v. United States 127 F.3d 1249, 1254 (10th Cir. 1997); Fishburn v. Brown, 125, F3d 979, 982-83 (6th

Cir. 1997; Vennes v. An unknown number of Unidentified Agents of the United States, 26 F.3d 1448, 1453-54 (8th cir. 1994); McMillen v. United States dep't of Treasury, 960 F.2d 187 190 (1st cir. 1991) (per curium); Baddour, Inc. v. United States , 802 F,2d 801, 807-09 (5th Cir. 1986); Cameron v. IRS, 773 F.2d 126, 129 (7th Cir. 1985). The Ninth Circuit has followed suit. Adams v. Johnson, 355 F.3d at 1185. Therefore the plaintiff may not bring a Bevens action for the alleged violations by government officials in the assessment and collection of his taxes.

4. 42 U.S.C § 1983

The plaintiff also alleges that this case is a civil rights action arising under 42 U.S.C § 1983 ("Section 1983"), which provides that:

> Every person who, under color of any statute, ordinance regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C § 1983 (emphasis added).

Federal officials who act under color of federal law are not subject to liability under 42 U.S.C § 1983. District of Columbia v. Carter, 409 U.S. 418, 424-25 (1973). Actions against federal officials must be brought directly under the constitution pursuant to the theory of

Bivens. See Id. At 433. Since the IRS officials were acting in their official federal capacity, the plaintiff is barred from bringing a section 1983 claim against them or the United States.

C. 26 U.S.C § 7433

Finally, the Court notes that, to the extent that the Plaintiff's suit is for damages for wrongful collection action by the IRS, the plaintiff must bring his suit under 26 U.S.C § 7433, which provides a specific statutory scheme to address tax collection grievances in federal court. However, before bringing suit under § 7433, the plaintiff must exhaust his administrative remedies in accordance with 26 U.S.C § 7433, and the related U.S. Treasury regulations, 26 C.F.R § 301.7433-1 (d)-(3).

The plaintiff's complaint does not allege a claim 26 U.S.C § 7433, nor does it indicate that the plaintiff has exhausted his administrative remedies. Accordingly, the district court does not have jurisdiction under 26 U.S.C § 7433 to hear plaintiff's claim for damages.

III. CONCLUSION

For the foregoing reasons, the Court grants the defendant's motion to dismiss the plaintiff's complaint for failure to state a claim under which relief can be granted.

IT IS SO ORDERED.

Dated: 11-27-06

DEAN D. PREGERSON
United States District Judge